

**TO:** Governor John Hoeven  
Attorney General Wayne Stenehjem  
Environmental Chief Francis Schwindt  
L. David Glatt

**FROM:** Terry L. Dwelle, MD, MPHTM  
State Health Officer

**DATE:** April 12, 2002

**RE:** Appointment of Hearing Officer for PSD SIP Review

The North Dakota Department of Health issued a notice on March 28, 2002 for a hearing to consider the Department's proposed determination regarding the adequacy of the North Dakota State Implementation Plan (SIP) to prevent significant deterioration of air quality in North Dakota. 40 CFR § 51.166 requires the Department to review, on a periodic basis, the adequacy of the SIP, and within 60 days of such time as information becomes available that an applicable PSD increment is being violated. The hearing will follow the procedures required by 40 CFR § 51.102, and the North Dakota SIP.

I hereby appoint Francis Schwindt, the current Environmental Chief of the Health Department, to act as hearing officer<sup>1</sup> and request Douglas Bahr, Assistant Attorney General be appointed as co-hearing officer in these proceedings. The role of Mr. Bahr is to address procedural questions that may arise during the hearing. Mr. Bahr would also be available to offer legal assistance to Mr. Schwindt regarding questions of law. Mr. Schwindt's role is to review all information presented and prepare findings.

I request that Mr. Schwindt in his capacity as hearing officer, make recommended findings to me regarding the adequacy of the North Dakota SIP to prevent significant deterioration of air quality in North Dakota. I will review the recommended findings and may adopt, modify, or reject them as a final agency action. I ask Attorney General Wayne Stenehjem to assign or appoint an assistant attorney general to assist me in this review.

The Department shall make a record of all testimony, written statements, documents, exhibits, and other evidence presented in writing or at the hearing, and make a list of all

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<sup>1</sup> N.D.C.C. § 28-32-27(1) provides that a "person or persons" appointed to preside at an "administrative proceeding" be referred to individually or collectively as "hearing officer."

witnesses. The findings of the hearing officer should make recommendations regarding the issues raised in the Department's Notice of Hearing of March 28, 2002.

This is not an adjudicative proceeding, under NDCC 28-32, but rather a proceeding to allow public participation and comment pursuant to 40 CFR § 51.166 and 40 CFR § 51.102 to review a federally delegated program under the Clean Air Act over which the Department has primacy. Further proceedings may be necessary to address specific issues raised in these proceedings. In addition to the issues identified in the Notice of Hearing, the Hearing Officer may make recommendations concerning other additional steps or procedures that may be necessary to assure the adequacy of the North Dakota SIP to prevent significant deterioration of air quality.

I direct that David Glatt, who will succeed Francis Schwindt as Environmental Chief of the Health Department on May 1, 2002, attend and observe the hearing, and participate in the agency's deliberations.

TLD:lrr